

# Exhibit D

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

## STATUS CONFERENCE

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
March 31, 2010, 2:05 p.m.

LEE A. MARZITTI

OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617)345-6787

25

<p>1 THE COURT: In a way that's the good news for you, but  2 in a way it's not.</p> <p>3 MS. SHOFNER: It's not, your Honor. We would want  4 this motion, if it was going to be granted, to be granted with  5 prejudice. He's currently seeking --</p> <p>6 THE COURT: No, I'll never do that with a Medicare  7 class. I'm not going to do it with prejudice.</p> <p>8 MS. SHOFNER: Or at least on condition that he not  9 file a state court action competing with this?</p> <p>10 MS. CONNOLLY: That's our concern, your Honor, is that  11 we have reached out to him about the fact that the voluntary  12 dismissal was without prejudice, and asked him to represent  13 that he was not going to be filing in another jurisdiction, and  14 he has refused to make that representation. So there is the  15 concern that --</p> <p>16 THE COURT: But I can't do it with prejudice. I've  17 got a whole class implicated. To the whole class? Maybe I  18 could make it with prejudice as to that particular estate.</p> <p>19 MS. CONNOLLY: The notice of voluntary dismissal does  20 say that it is for his client's individual claims. Now,  21 granted, there will not be any plaintiffs remaining if the  22 dismissal is granted; but if we were given time to replace the  23 class representatives, granting his notice of voluntary  24 dismissal, which we don't think can be done without a hearing,  25 but doing that would not effectively dismiss the class claims.</p>	<p>1 MS. CONNOLLY: Well, there are a couple of things that  2 we would like for you to do. We would like to have additional  3 time, obviously, to try to find a class representative; but we  4 also believe that the dismissal can't happen without a court  5 order, and that we have some serious concerns that this  6 dismissal was done as part of Mr. Haviland's vendetta to class  7 counsel. It is very oddly coincidental that both of the J&amp;J  8 plaintiffs suddenly decided that they didn't want to  9 participate in the case three days before we were going to have  10 oral argument on the post-remand motions for summary judgment.  11 Our attempts to get a rational explanation from Mr. Haviland  12 about why this was occurring have just not happened, and we  13 believe that he should have to account to this Court why his  14 plaintiffs are seeking to withdraw, and that there should be a  15 hearing under Rule 23(e), and he should have to come forth and  16 represent to this Court that this is in fact what these  17 plaintiffs want to do.</p> <p>18 THE COURT: What's 23(e)?</p> <p>19 MS. CONNOLLY: That's the dismissal, what the  20 dismissal would have to be under 23(e) for a voluntary  21 dismissal because we have a 40 -- a certified class.</p> <p>22 THE COURT: All right, so that's helpful. So you want  23 me to just schedule a 23(e) hearing?</p> <p>24 MS. CONNOLLY: Yes. And we believe that Mr. Haviland  25 should be required to appear, which he has indicated that he</p>
<p>1 It would only dismiss his client's individual claims.</p> <p>2 THE COURT: Well, let me ask you this: Do you have  3 any -- you've had trouble with this over the years. I've  4 always allowed you to replace because this is, I've always  5 said, an aging and dying class.</p> <p>6 MS. CONNOLLY: That's right.</p> <p>7 THE COURT: That having been said, you've got to find  8 someone.</p> <p>9 MS. CONNOLLY: Yes.</p> <p>10 THE COURT: And it's always been a problem for you.  11 It takes a long time.</p> <p>12 MS. CONNOLLY: Yes, it does take a long time, and  13 these in particular are very difficult clients to find.</p> <p>14 THE COURT: My guess is --</p> <p>15 MS. CONNOLLY: That we previously turned over heaven  16 and earth to look for them?</p> <p>17 THE COURT: To find people. So I'm trying to figure  18 out what to do here.</p> <p>19 Have you filed anything? You haven't filed anything.</p> <p>20 MS. SHOFNER: We filed the motion for summary judgment  21 which was originally -- yes, no, no, no.</p> <p>22 THE COURT: On this issue.</p> <p>23 MS. SHOFNER: No, we haven't.</p> <p>24 THE COURT: So should I dismiss this case without  25 prejudice to the class?</p>	<p>1 Page 9  1 doesn't want to do.</p> <p>2 THE COURT: I understand why he doesn't want to. I  3 mean, he's been disqualified here. So if he doesn't appear,  4 then what? I'm just trying to play this out. I've made it  5 pretty clear, I think -- I haven't even read your material --  6 what I'm likely to do on the 93A claim, unless I change my  7 mind, because I haven't looked at it in years. But there is  8 the issue of the national class that's triable to a jury. I  9 thought that was a fair point that was never really teed up  10 before; what do I do with that? And I hate to have the  11 potential for different suits and different statutes argued.</p> <p>12 MS. SHOFNER: Your Honor, we do have precedent for the  13 idea of barring Mr. Haviland from bringing these as state law  14 claims, In Re: Phillips Petroleum.</p> <p>15 THE COURT: But I wouldn't be inclined to do that, in  16 the sense of if there's a viable claim somewhere. Here's the  17 thing: I don't remember it well. The issues with respect to  18 Johnson &amp; Johnson came up in a blur at the end. And I do  19 remember my strong feelings about 93A, but I also remember that  20 I didn't focus on -- maybe you didn't focus me on it, or maybe  21 I just didn't focus on it -- the rest of the country. And  22 that's the piece that I think the First Circuit was confused on  23 because I hadn't actually addressed it explicitly, and it came  24 back to me. And I've got to do that. And now let's assume  25 there's no real plaintiff. I can't do it, but that doesn't</p>